

#5044
5/12/88

LEASE AMENDMENT

BUILDING 106

Table of Contents

Lease Amendment

Building 106

Article 1 Amendment to Article 3 of the Lease Concerning Rent.....	1
Article 2 Amendments To Article 4 of the Lease Concerning Payment of Taxes and other Charges, and Payments.....	1
Article 3 Amendment To Article 5 of the Lease Concerning Possession, Use Compliance with Laws, Maintenance and Repairs.....	2
Article 4 Amendment To Article 18 of the Lease Concerning Landlord's Remedies and Breach.....	3
Article 5 Amendment To Article 20 of the Lease Concerning Subletting.....	4
Article 6 Amendment To Article 21 of the Lease Concerning Landlord's Security Interest, Covenant Against Encumbrances, Assignment of Subleases.....	4
Article 7 Amendment To Article 27 of the Lease Concerning Estoppel Certificate.....	5
Article 8 Amendment To Article 31 of the Lease Concerning Definitions.....	5
Article 9 Amendment To Article 33 of the Lease Concerning Parking.....	7
Article 10 Miscellaneous.....	7
Signatures.....	7

BUILDING 106 - LEASE AMENDMENT

This Lease Amendment (herein Amendment) to the Building 106 Lease (herein the Lease) dated July 11, 1986 is entered into by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (herein Landlord) and Basilica Associates I Limited Partnership, a Massachusetts Limited Partnership (herein Tenant) and its successors and assigns. The Parties hereto acknowledge this Lease Amendment to satisfy their obligations, and to be consistent with the terms and the intent as stated in the Estoppel Certificate (herein Certificate) entered into by the Parties on September 30, 1987. Accordingly, with particular reference to the paragraph numbered 10 of the Certificate, the Parties state their intent that this Amendment be retroactive to July 11, 1986. Further, with particular reference to the paragraph numbered 11 of the Certificate, the Parties state that the Certificate is hereby null and void.

Article 1

AMENDMENT TO ARTICLE 3 OF THE LEASE CONCERNING RENT

1.1 Article 3 of the Lease is hereby amended by inserting after subsection 3.1.B the following new subsection:

C. Tenant shall also pay as additional rent for each lease year, or portion thereof, during which any condominium unit is leased by Tenant a sum equal to ten percent (10%) of the Net Cash Flow ("percentage rent") payable monthly in advance based on a budget prepared annually and submitted to Landlord not less than sixty (60) days prior to the beginning of each Lease year; and as and when the same are received by or made available to or for the benefit of Tenant, fifteen percent (15%) of all Net Refinancing Proceeds and fifteen percent (15%) of Net Transfer Proceeds. The percentage rent requirement shall take effect once eighty percent (80%) of the units are occupied.

Article 2

AMENDMENTS TO ARTICLE 4 OF THE LEASE CONCERNING PAYMENT OF TAXES AND OTHER CHARGES; AND PAYMENTS

2.1 Article 4 of the Lease is hereby amended by inserting after section

4.10 and before section 4.11 the following new section:

Section 4.10.1 If and when real estate tax bills are rendered by the City of Boston which assess and tax condominium units comprising the Property, all payments to the Landlord which would otherwise be in lieu of real estate taxes in accordance with Section 4.10 hereof shall cease and terminate and shall be equitably adjusted for any portion of a tax year.

2.2 Article 4 of the Lease is hereby amended by inserting after section 4.12 the following new sections:

Section 4.13 Tenant shall pay to the Landlord a security fee equal to Five Cent (\$.05) per gross square foot of the Improvements to the Leased Premises per annum for the support of security services in the Charlestown Navy Yard commencing on July 1, 1987 and such payments shall continue until such time as the Landlord determines that such security services are no longer necessary. Said security fee shall be subject to a reasonable escalation formula, as determined by the Landlord, for the remainder of the Lease term.

Section 4.14 Tenant shall pay to the Landlord a maintenance fee equal to Five Cents (\$.05) per gross square foot of the Improvements to the Leased Premises per annum commencing one (1) month after receipt of a Certificate of Occupancy and thereafter is subject to a reasonable escalation formula, as determined by the Landlord, for the remainder of the Lease.

Article 3

AMENDMENT TO ARTICLE 5 OF THE LEASE CONCERNING POSSESSION, USE COMPLIANCE WITH LAWS, MAINTENANCE AND REPAIRS

3.1 Article 5 of the Lease is hereby amended by inserting after section 5.1 and before section 5.2 the following new section:

5.1.1 Notwithstanding any provisions of the Lease to the contrary and without amending or modifying the amounts due under this Lease, the Tenant may lease or sublet up through September 30, 1993, eighty-three (83) units within the contemplated leasehold condominium, exclusive of the nine (9) units set aside for sale to Eligible Elderly Individuals, as provided for in sections 5.2 and 5.3 of

the Lease, upon such conditions and for such terms as Tenant shall determine, subject to the following: (a) Tenant shall pay to the Landlord the total amount of Nine Hundred Thousand Dollars (\$900,000) (herein the Principal Amount), of which Four Hundred Thousand Dollars (\$400,000) is hereby acknowledged by the Landlord as paid and the remainder, Five Hundred Thousand Dollars (\$500,000), (herein the Deferred Amount) shall be due and payable in full on September 30, 1993 or on the date of the sale of the fortieth of the eighty-three (83) units, whichever occurs first (herein the Maturity Date), with interest from and after the date hereof at two percent (2%) above the Prime Rate, as defined below, per annum and to be accrued and payable in full on the Maturity Date; (b) Tenant or the General Partners of the Tenant shall have the right to prepay the Deferred Amount in full with accrued interest at any time prior to the Maturity Date; (c) on the date hereof, the Tenant shall execute a Promissory Note, payable to the Landlord and the terms and conditions of which are hereby deemed to be acceptable to the Landlord, in connection with the payment of the Deferred Amount with accrued interest, as set forth herein, and the General Partners of the Tenant, Paul F. May and NAGE Housing, Inc., (the "Guarantors"), shall execute a Guaranty instrument, the terms and conditions of which are hereby deemed to be acceptable to the Authority, under which each individually and personally guarantee to the Authority the payment in full of the Deferred Amount with accrued interest; (d) any portion of the Principal Amount paid to the Landlord shall be credited against any amounts due the Landlord under 4.11 or any additional rent, exclusive of Base Rent or other payments that may be due in accordance with this Amendment.

In the event any state or local statute, ordinance, rule or regulation is enacted or promulgated after the date hereof, which would directly prohibit the sale of the eighty-three (83) condominium units the Tenant shall be permitted to continue to lease or sublet said units for the remainder of the Lease term or until such time as the sale of said units is again allowed under applicable law, whichever occurs first. Accordingly, the provisions relative to Tenant leasing said units shall remain in full force and effect. Notwithstanding the foregoing, the repayment of the Deferred Amount with accrued interest or the time restriction on leasing or subletting the eighty-three (83) units shall not be respectively, an obligation of, or apply to any mortgagee which is a Qualifying Leasehold Mortgagee or to those holding by, through or under such mortgagee. For purposes of this paragraph, the term "Prime Rate" shall mean the fluctuating

4

rate of interest for unsecured loans made by the Bank of Boston as published by Bank of Boston at its principal Boston office as its "Base Rate". In the event said Bank of Boston ceases to publish its Base Rate, a similar financial institution shall be chosen by the Landlord.

Article 4

AMENDMENT TO ARTICLE 18 OF THE LEASE CONCERNING LANDLORD'S
REMEDIES AND BREACH

4.1 Section 18.1 of Article 18 of the Lease is hereby amended by deleting the first two sentences of subsection 18.1 (b) and inserting in place thereof the following:

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant one hundred twenty (120) days' prior written notice of termination. In accordance with the terms of this Lease, all of Tenant's right in the Property shall terminate upon expiration of such notice period and Tenant shall surrender and vacate the Property in broom clean condition, and Landlord may re-enter and take possession of the Property and eject Tenant or any other person or persons claiming any right under or through Tenant or eject some and not others or eject none; provided, however, that Landlord shall not eject any who Landlord is required to recognize pursuant to Section 20.1 hereof and as provided for in Section 20.1 hereof.

Article 5

AMENDMENT TO ARTICLE 20 OF THE LEASE CONCERNING SUBLETTING

5.1 Section 20.2 of Article 20 is hereby amended by inserting after the first paragraph and before the second paragraph the following sentence:

Landlord will prepare such form of Non-Disturbance, Recognition and Attornment Agreement and forward the same to Tenant when requested in a timely manner. Such form shall be substantially as attached hereto as Exhibit A-1.

Article 6AMENDMENT TO ARTICLE 21 OF THE LEASE CONCERNING LANDLORD'S
SECURITY INTEREST; COVENANT AGAINST ENCUMBRANCES; ASSIGNMENT OF
SUBLEASES

6.1 The second paragraph of section 21.1 is hereby deleted and the following inserted in place thereof:

The Landlord agrees that, until a default shall occur hereunder, as to which notice has been given and the time within which to cure has elapsed, the Tenant may, subject to the rights and obligations of any Leasehold Mortgagee set out under Article 23 hereof (and whether such rights exist under its Leasehold Mortgage or documents given it as supplemental security for its loan) collect, receive and enjoy the rents, issues, profits and income of the Leased Premises, but the rents shall not be collected more than one month in advance of the due date thereof and no money shall be demanded in advance of the due date, except one month's rent and one month's security deposit.

Article 7AMENDMENT TO ARTICLE 27 OF THE LEASE CONCERNING ESTOPPEL
CERTIFICATE

7.1 Section 27.1 of Article 27 is hereby amended by adding at the end of said section the following sentence:

The failure of either party to respond to such a request in writing within fifteen (15) business days after such request has been made in accordance with the provisions in this Section, shall be deemed to mean that such party does not claim any defaults under this Lease.

Article 8

AMENDMENTS TO ARTICLE 31 OF THE LEASE CONCERNING DEFINITIONS

8.1 Section 31.19 of the Lease is hereby amended by deleting said section in its entirety and inserting in place thereof the following:

31.19 The term "Net Refinancing Proceeds" shall mean the amount by which the proceeds of refinancing (reduced by the reasonable expenses

incurred by Tenant in connection with the refinancing) exceed the greater of Total Project Cost or the then outstanding principal balance of the financing provided by the Trustees of the AEW #86 Trust plus all unpaid interest due thereunder.

8.2 Section 31.21 of the Lease is hereby amended by deleting said section in its entirety and inserting in place thereof the following:

31.21 The term "Refinancing" means replacing all or a portion of the then existing Financing with new Financing, except that Refinancing shall not include the replacement of the initial construction financing for the Improvements by the initial permanent financing except to the extent that said permanent financing exceeds total project costs and any operating deficits.

8.3 Section 31.23 of the Lease is hereby amended by deleting said section in its entirety and inserting in place thereof the following:

31.23 The term "Eligible Elderly Individual" shall mean an individual fifty-five (55) years of age or older who satisfies the eligibility criteria as set forth in Article 5, Section 5.2 and the Affirmative Marketing Plan as approved by Landlord.

8.4 Article 31 of the Lease is hereby amended by adding after section 31.26 the following new sections:

31.27 The term "Net Cash Flow" shall mean all income received by Tenant from, or with respect to, the use occupancy or other utilization of space and/or facilities of the Property, other than revenue from the sale of the condominium units, less the Allowed Deductions.

31.28 The term "Allowed Deductions" shall mean the following amounts actually paid with respect to the Lease Year in question: (a) All Impositions (as defined in Article 4, Section 4.1) and all reasonable and customary charges incurred for the maintenance, protection, conservation and operation of the Property in the manner required or permitted by this Lease and consistent with the operation and management from time to time of like rehabilitated properties in the City of Boston as and to the extent the same are considered ordinary in the business and necessary for its operation, including without limitation, payments made by Tenant for insurance premiums, legal expenses, management expenses, telephone and utilities, fuel, repairs and maintenance, accounting, statistical or bookkeeping

services or equipment, salaries, advertising and promotion, commissions and other compensation for leasing, alterations and repairs incidental to the marketing and leasing of the Property to potential occupancy tenants and to make space ready for occupancy tenants, other charges for operation and management of the Property and the Partnership; and amounts paid to a reserve account, actually maintained by Tenant and held by the Depository, for replacements and capital improvements, provided that with respect to any such reserve account: i) the amount deposited therein in any Lease Year shall not exceed two percent (2%) of Gross Revenues for such Lease Year; and ii) withdrawals made therefrom shall only be for the purpose of paying for the acquisition and installation of physical assets which replace, or appreciably lengthen the life of an existing asset or add to the asset base of the Property.,

(b) Payments made by Tenant to Landlord of Base Rent;

(c) Payments made by Tenant for fees pursuant to Article 30, section 30.2;

(d) An amount which shall be computed by multiplying Total Project Costs by twelve and one-half percent (12 1/2%).

31.29 The term "Occupancy Tenant" shall mean any tenant, subtenant, licensee, or other party of any type entitled to the use or occupancy of space in or on the Improvements or the Property, under a sublease from Tenant, other than Tenant holding under this Lease; the term "sublease" shall mean any lease or other agreement, written or oral, for the use or occupancy of any such space entered into between Tenant and an Occupancy Tenant. These terms shall refer to any such Occupancy Tenant or sublease whether such Occupancy Tenant or sublease enjoys a position superior or subordinate to Tenant or this Lease.

Article 9

AMENDMENT TO ARTICLE 33 OF THE LEASE CONCERNING PARKING

9.1 Section 33.1 of the Lease is hereby amended by deleting said section in its entirety and inserting in place thereof the following:

33.1 The tenant shall construct eight-four (84) on site parking spaces. Eighty-three (83) of these spaces shall be sold with the market rate units to the individual condominium unit purchaser. Tenant shall pay to Landlord, in addition to Base Rent and other impositions, including the provisions of 4.11, an amount equal to five percent (5%) of the Gross

6

Sales Price of such parking space in the event the parking space is sold separately.

The one remaining on-site parking space shall be made available by lottery system to the purchasers of the nine units set aside for the Eligible Elderly Individuals. Tenant may charge market rate for this parking space but in no event shall the purchase price exceed fifteen thousand (15,000) dollars.

Article 10

MISCELLANEOUS

10.1 With reference to the last sentence of section 19.4, the parties state, for purposes of alleviating any ambiguities, that as long as Tenant elects to lease units the provisions of section 19.4 regarding Net Transfer Proceeds will be applicable. The parties further acknowledge that for purposes of determining Net Transfer Proceeds, a "transfer" shall not include a sale of an individual condominium unit.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day of April, 1988, under seal.

Boston Redevelopment Authority Approved As To Form:

Stephen Coyle, Director
Basilica Associates I Limited Partnership

Chief General Counsel

General Partner

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

Then personally appeared before me the above named Joseph L. DeLorey as President of NAGE Housing, Inc. who executed the foregoing Amendment on behalf of Basilica Associates I Limited Partnership.

9

Notary Public
Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

Then personally appeared before me the above named Stephen Coyle, as Director of the Boston Redevelopment Authority, who executed the foregoing Amendment on behalf of the Boston Redevelopment.

Notary Public
Commission Expires:

MAY 12, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY
AND STEPHEN COYLE, DIRECTOR

FROM: JOHN LEIGH, ASSISTANT DIRECTOR
JAMES ENGLISH, DEPUTY DIRECTOR
HARBOR PLANNING AND DEVELOPMENT

SUBJECT: BUILDING 106 - CHARLESTOWN NAVY YARD
AUTHORIZATION TO EXECUTE LEASE AMENDMENT

SUMMARY: Memorandum requesting authorization to execute a Lease Amendment to the Building 106 Lease providing for the Authority to receive a \$900,000 payment, Percentage Rent, a share of Net Refinancing Proceeds and Net Transfer Proceeds, and additional fees for allowing Tenant to sublet 83 of the 92 condominium units for a limited time period.

Bascillica Associates I Limited Partnership is a Massachusetts limited partnership (the "Tenant"), of which NAGE Housing, Inc. and Paul May are the general partners. Pursuant to a final designation vote adopted by the Authority on March 20, 1986, the Tenant has rehabilitated Building 106, the former boiler shop, into 92 condominium units with parking. Of the 92 units, 9 units will be sold to eligible elderly individuals at a maximum sale price of \$75,000. Further, on August 13, 1987, the Authority voted to authorize the issuance of a Certificate of Completion.

The proposed Lease Amendment requires the Tenant to make a total payment of \$900,000 to the Authority as follows: \$400,000 in cash and a deferred amount of \$500,000, plus interest at 2% above the prime rate, according to the terms of the Lease Amendment and a separate Promissory Note. Full payment of the \$500,000 and accrued interest will be required upon the sale of the 40th condominium unit or on the September 30, 1993, whichever occurs first. In addition, the Lease Amendment provides that the Authority will receive Percentage Rent annually, share in Net Refinancing Proceeds and Net Transfer Proceeds, and receive certain fees throughout the term of the Building 106 Lease, as amended. The Tenant will be allowed to sublet instead of sell up to 83 of the condominium units until September 30, 1993, exclusive of the 9 units set aside for sale to eligible elderly individuals.

Based on beforementioned benefits to the Authority, it is recommended that the Director be authorized to execute the Lease Amendment, in substantially the form as enclosed herewith.

An appropriate vote follows:

VOTED: That the Director be, and hereby is, authorized on behalf of the Boston Redevelopment Authority (the "Authority"), in connection with the redevelopment of Building 106 in the Charlestown Navy Yard, to execute a Lease Amendment, in substantially the form as presented at this meeting, which constitutes the first amendment to a certain Ground Lease, entitled "Building 106 Lease", by and between the Authority, as Landlord, and Bascillica Associates I Limited Partnership, as Tenant, dated as of July 11, 1986 and recorded in the Suffolk Registry of Deeds, Book 12940, Page 138, and any and all related documents deemed necessary and appropriate by the Chief General Counsel.